

## ***7 Official Opinions of the Compliance Board 18 (2010)***

### **Notice Requirements – Method – Notice only to those who had preregistered to be advised of meetings violated Act**

March 9, 2010

*Michele J. Fluss*

The Open Meetings Compliance Board has considered your complaint that the Coastal and Watershed Resources Advisory Committee (“CWRAC”) has violated the Open Meetings Act by failing to give proper notice in advance of its meetings and, as a result, has also violated requirements of the Act that public bodies conduct open sessions. For the reasons explained below, we find that CWRAC violated the notice provisions of the Act.

## **I**

### **Complaint & Response**

According to the complaint, “[n]o reasonable advance public notice” was given before CWRAC meetings held during the period beginning December 2008 through November 2009. Notice had been provided only to those persons included on a CWRAC meetings notification list. As a result, the complaint alleged CWRAC violated the Act’s notice requirement, §10-506(a),<sup>1</sup> as well as provisions requiring public bodies to meet in open session and granting the public a right to attend such meetings. §§10-505 and 10-507(a). The complaint also requested that we review under § 10-502.6 a meeting scheduled for December 11, 2009, two days following the date of the complaint, based on the same allegations.<sup>2</sup>

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<sup>1</sup> All statutory references are to the Open Meetings Act, Title 10, Subtitle 5 of the State Government Article, Annotated Code of Maryland.

<sup>2</sup> Although the complainant asked that we consider the December 11, 2009, meeting under §10-502.6, on behalf of the Open Meetings Compliance Board, Robert N. McDonald, Chief Counsel for Opinions and Advice at the Office of Attorney General, advised that §10-502.6 extended only to meetings that will be closed in violation of the Act. Because CWRAC did not plan on closing the meeting, Mr. (continued...)

The complaint also noted that CWRAC meetings are not announced in the *Maryland Register* nor are they included as part of the Department of Natural Resources' "DNR Calendar" published on the Department's website. Nor are the scheduled meeting times announced on the Department's website as part of the information about the CWRAC.

In a timely response on behalf of the CWRAC, Matthew Fleming, director of Maryland's Chesapeake and Coastal Program at the Department of Natural Resources, acknowledged that proper notice was not given in advance of six meetings held from December 2008 through December 2009. According to the response, the Department will provide notice of CWRAC meetings via news releases sent to representatives of news media throughout the State that regularly report on the Department's activities and will post notice of the meetings on the calendar on the Department's website.

## **II**

### **Analysis**

Given the CWRAC's acknowledgment that its practice failed to satisfy requirements of the Act, detailed discussion is not necessary. Before a public body conducts a meeting that is subject to the Open Meetings Act, "reasonable advance notice" is required. §10-506(a). In terms of the method that notice might be given, the Act allows public bodies such as the CWRAC considerable discretion. As a State entity, notice could be given through the *Maryland Register*. Notice to representatives of the media who regularly report on activities of the public body or the activities of State government would have satisfied the Act. If the public is aware of the practice, posting notice on a website ordinarily used by the public body to communicate to the public or posting at a convenient public location either at or near the planned session would satisfy the Act. Finally, the Act recognizes that the notice requirement may be satisfied "by any other reasonable method." §10-506(c).

Apparently, any member of the public could have asked the Department of Natural Resources to be added to the list whereby he or she would have

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<sup>2</sup> (...continued)

McDonald concluded that section did not apply. Letter from Assistant Attorney General Robert N. McDonald to Ms. Michele J. Fluss (December 10, 2009). Thus, this meeting was reviewed in accordance with the Compliance Board's regular process under the Act rather than as a prospective complaint under §10-502.6.

received automatic notice by e-mail in advance of CWRAC meetings. Had this practice been accompanied by any other method of giving notice under the Act, it would be a very effective mechanism of communicating with those persons known to have an interest in following CWRAC activities. The deficiency here, however, is that it apparently was the sole practice followed. Anyone who had not known to preregister, or who chose not to preregister, was effectively deprived of any notice in advance of the meetings, resulting in a violation of §10-506(a). As we have previously recognized, when a public body fails to give proper notice in advance of a meeting, the meeting is not in reality an open meeting. 6 *OMCB Opinions* 47, 49 (2008).

We acknowledge the Department's assurances that notice of meetings will be given by additional methods in order to ensure compliance with the Act in the future.

### **III**

#### **Conclusion**

We find that the CWRAC failed to satisfy the notice requirements of the Act during the time period in question by providing notice solely to those who requested to receive notice in advance of CWRAC meetings.<sup>3</sup>

OPEN MEETINGS COMPLIANCE BOARD

*Elizabeth L. Nilson, Esquire*

*Courtney J. McKeldin*

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<sup>3</sup> Given that no one apparently was denied access to the sessions in question and that there was a method of giving notice, albeit one that didn't along satisfy the Act, we need not reach the conclusion suggested by the complainant, that is, whether the CWRAC also violated §§10-505 and 10-507(a). More important in our view is the agency's pledge to modify its practices in a manner that will ensure future compliance.